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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,740	09/28/2001	Christopher D. Batich	QMT-1RIA	4440

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EXAMINER	
ANDERSON, CATHARINE L	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/965,740	BATICH ET AL.	
	Examiner	Art Unit	
	C. Lynne Anderson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-17,19-31,33-46 and 51-69* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-17,19-31,33-46 and 51-69* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 3 April 2006, with respect to the rejection(s) of claim(s) 1-2, 4, 12-14, 16-17, 26-27, 30-31, 33, and 40-41 under Calcaterra (4,810,567) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Perrault et al. (6,039,940).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 5-6, 8-14, 16-17, 20-28, 30-31, 34, 36-42, 51-53, 57-60, 64-66, and 68-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Perrault et al. (6,039,940).

With respect to claims 1, 16, and 30, Perrault discloses a material for absorbing biological fluids comprising a flexible substrate and a polymer of antimicrobial monomeric moieties, as described in column 3, lines 20-22. The material is non-hydrolyzable and non-leachable and comprises a superabsorbent material, as disclosed

in column 4, lines 61-64. The polymer is covalently bonded to the substrate by non-siloxane bonds, as shown in column 4, lines 15-25.

With respect to claims 2, 17, 31, and 51, the monomeric moiety may be a quaternary ammonium, as disclosed in column 3, lines 20-22.

With respect to claim 5, the polymer is completely polymerized, and therefore has a degree of polymerization of 100.

With respect to claims 6, 20, and 34, the material comprises an absorbent dressing, as disclosed in column 3, lines 20-22.

With respect to claims 8, 22, and 36, the flexible substrate comprises synthetic polymers, as disclosed in column 3, lines 20-22.

With respect to claims 9-10, 23-24, and 37-38, the polymer is bonded to the substrate by a redox reaction catalyzed by a cerium-containing catalyst, as disclosed in column 7, lines 21-40, which results in an ether linkage.

With respect to claims 11-14, 25-28, and 39-42, the polymer is formed by polymerization of vinyl-containing monomers such as allyl amines and acrylamides, as disclosed in column 3, lines 54-67.

With respect to claims 52, 59, and 66, the moieties are bound by carbon-nitrogen bonds, as disclosed in column 4, lines 15-25.

With respect to claims 53, 58, 60, 65, and 68-69, the substrate is a nonwoven fabric, as disclosed in column 4, lines 50-57.

With respect to claims 57 and 64, the substrate is a polyacrylate, which is a polyurethane.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 19, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrault et al. (6,039,940) in view of Mao (6,346,125).

Perrault discloses all aspects of the claimed invention with the exception of the moieties comprising a biguanide. Mao discloses a material for absorbing fluids comprising a flexible substrate having an enhanced area comprising a polymer of antimicrobial monomeric moieties, as disclosed in column 1, lines 5-8. The flexible substrate comprises a nonwoven fabric of cellulose or synthetic fibers, as disclosed in column 9, lines 1-9. The antimicrobial may be a biguanide, as disclosed in column 4, lines 42-46. The treatment of the substrate with a quaternary compound or biguanide provides the fabric with improved inhibition of microorganisms and odors, as disclosed in column 9, lines 20-24. It would therefore be obvious to one of ordinary skill in the art at the time of invention to treat the flexible substrate of Perrault with a biguanide, as taught by Mao, to provide the fabric with improved inhibition of microorganisms and odors.

Claims 15, 29, 43-46, 54, 61, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrault et al. (6,039,940) in view of Kolb et al. (6,797,856).

Perrault fails to disclose dimethyldiallylammonium chloride (DADMAC). Kolb teaches the use of quaternary ammonium and DADMAC as equivalent compounds in the treatment of an absorbent material for antimicrobial purposes, as disclosed in column 6, lines 16-33. It would therefore be obvious to one of ordinary skill in the art at the time of invention to treat the flexible substrate of Perrault with dimethyldiallylammonium chloride, as taught by Kolb, since it is functionally equivalent to quaternary ammonium.

Claims 7, 35, 56 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrault et al. (6,039,940).

With respect to claims 7 and 35, Perrault discloses all aspects of the claimed invention with the exception of cellulose. The use of cellulose in would dressings. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the material of Perrault with a cellulose.

With respect to claims 56 and 63, Perrault discloses all aspects of the claimed invention with the exception of a hemostatic agent. The use of hemostatic agents in would dressings to inhibit bleeding are well known in the art. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the material of Perrault with a hemostatic agent to inhibit bleeding.

Claims 55 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrault et al. (6,039,940) in view of Faries, Jr., et al (5,816,252).

Perrault discloses all aspects of the claimed invention with the exception of an indicator. Faries teaches the use of an indicator in a surgical drape to alert to the presence of leaks, as disclosed in column 2, line 65 to column 3, line 3. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the material of Perrault with an indicator, as taught by Faries, to alert to the presence of leaks.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 6, 7-11, 15-17, 20-25, 29-31, 34-39. 43-46, and 51 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9-18 of copending Application No. 09/857,906. Although the conflicting claims are not identical, they are not patentably distinct from each other

because a non-hydrolyzable and non-leachable bond is inherently less prone to degradation by acids or bases.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CLA
cla
June 23, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER